

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X **Docket#**  
UNITED STATES OF AMERICA, : 16-cr-376 (JBW) (JO)  
:   
- versus - : U.S. Courthouse  
: Brooklyn, NY  
ARROYO, :   
Defendant : June 29, 2017  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

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1 THE COURT: This is for Arroyo, docket 16-cr-  
2 376 United States of America v Arroyo.

3 Counsel, can you state your appearances for the  
4 record please.

5 MR. ROLLE: Good afternoon your Honor, Drew  
6 Rolle for the United States and with me at counsel's  
7 table is Special Agent Leslie Adomcheck(ph) of the FBI.

8 THE COURT: Good afternoon to you both.

9 MR. JACOBSON: Good afternoon, your Honor. Sam  
10 Jacobson, Federal Defenders on behalf of Chris Arroyo,  
11 who is present next to me. We're joined by Rachel  
12 Bass(ph), a paralegal in our office.

13 THE COURT: Good afternoon to all of you.

14 I understand, Mr. Jacobson, that your client  
15 wishes to waive indictment and plead guilty to a  
16 superceding information pursuant to an agreement with the  
17 government. Is that correct?

18 MR. JACOBSON: That is correct, your Honor.

19 THE COURT: All right.

20 Mr. Arroyo, if you're going to plead guilty to  
21 a crime today there's some  
22 cer -- there's some things I have to explain to you and  
23 some questions I have to ask. Your answers must be  
24 truthful. So I'm going to ask you to stand for a moment  
25 so that I can swear you in.

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1 C H R I S T O P H E R A R R O Y O, called as a witness,  
2 having been first duly sworn, testifies as follows:

3 THE COURT: Now, Mr. Arroyo, now that you've  
4 sworn to tell the truth, you must tell the truth. If you  
5 were deliberately to lie in response to any of my  
6 questions, you could face additional criminal charges for  
7 perjury. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. And you're going to have to  
10 answer out loud each time. Why don't you pull that  
11 microphone a little closer to you. We make an audio  
12 recording of it so we need to make sure we can hear  
13 you. Okay.

14 So, it's very important that you understand my  
15 questions. If you need me to repeat or explain anything,  
16 just let me know. Will you do that?

17 THE DEFENDANT: Yes.

18 THE COURT: And if you need time to confer with  
19 your lawyer, let me know that, I'll give you as much time  
20 as you like. Do you understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Okay. Now I've got a few documents  
23 here that appear to have your signature. There's a one  
24 page document called the consent form, there's another  
25 one page document that's called a waiver of indictment

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1 and then there's a multiple page document that appears to  
2 be your agreement with the government. I've held each  
3 one up for you. Did you sign these documents just --

4 THE DEFENDANT: Yes.

5 THE COURT: -- now?

6 Okay. Did you read and understand these  
7 documents before you signed them?

8 THE DEFENDANT: Yes.

9 THE COURT: I'm going to go through with -- go  
10 through them with you individually as we go on. But a  
11 couple of preliminary things. First of all, Mr. Rolle,  
12 has the government notified any identified victims of the  
13 charged offense of today's proceeding?

14 MR. ROLLE: Yes, your Honor, we have. We have  
15 identified all of the identified victims of today's  
16 proceedings.

17 THE COURT: Okay. And has any victim expressed  
18 a desire to be heard?

19 MR. ROLLE: They have not, your Honor. Let me  
20 confer with the special agent --

21 THE COURT: Okay.

22 MR. ROLLE: -- that spoke directly with them.

23 (Pause)

24 MR. ROLLE: They have expressed a desire to  
25 speak at sentencing, your Honor.

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1           THE COURT: Okay. As long as they're aware of  
2 that opportunity. And of course, there are other people  
3 here in the courtroom, I won't ask you to identify  
4 yourselves, of course, but if there's anybody here who  
5 believes him -- himself or herself to be a victim of the  
6 offenses in this case, you are free to be heard as to  
7 whether the plea should be accepted. And please speak up  
8 and I'll give you an opportunity to be heard.

9           MR. JACOBSON: Your Honor, if I could briefly  
10 just notify the court that Mr. Arroyo's mother, Debbie  
11 Medina(ph), is in the audience.

12           THE COURT: All right. That's fine and I don't  
13 need to identify people, I just want to make sure that if  
14 there's a victim here, they have a right to be heard.

15           All right. Now, Mr. Arroyo, I need to make  
16 sure you're competent to waive your rights so please tell  
17 me how old are you?

18           THE DEFENDANT: Twenty-six.

19           THE COURT: How far did you go in school?

20           THE DEFENDANT: Uh, some college. Two  
21 different colleges.

22           THE COURT: Are you now or have you recently  
23 been under the care of a doctor or a psychiatrist for any  
24 reason?

25           THE DEFENDANT: Uh -- recent, yeah. Recently,

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1 yeah.

2 THE COURT: Okay. Tell me what kind of care  
3 you've been receiving. And I --

4 THE DEFENDANT: Uh --

5 THE COURT: I don't mean to pry but I need to  
6 -- I need to ask these questions to make sure that you're  
7 able to understand your rights and make an intelligent  
8 decision about whether to give them up. So sorry for  
9 asking prying -- private questions. But tell me what  
10 kind of care you're receiving.

11 THE DEFENDANT: Uh -- medication. Like,  
12 antidepressants.

13 THE COURT: Antidepressants? Okay. How  
14 recently have you taken them?

15 THE DEFENDANT: Once a day.

16 THE COURT: Once a day. Does it affect your  
17 ability to concentrate, to focus, to think clearly?

18 THE DEFENDANT: Uh -- it helps me a little bit.  
19 In my emotions.

20 THE COURT: Okay.

21 THE DEFENDANT: And how I feel.

22 THE COURT: You know, the reason I ask these  
23 questions is to make sure that you're able to understand  
24 what's going on and to make an intelligent decision.  
25 You're the best judge of that. Have you had any -- when

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1 you take the medication, does it affect your ability to  
2 concentrate or to think clearly, do you think?

3 THE DEFENDANT: No.

4 THE COURT: Mr. Jacobson, were you -- I thought  
5 you were about to say something. Okay.

6 When did you last take your medication?

7 THE DEFENDANT: Last night.

8 THE COURT: Okay. Aside from your  
9 antidepressant medication, in the last 24 hours have you  
10 had any pill or drug or medicine or alcohol?

11 THE DEFENDANT: No.

12 THE COURT: Have you ever been hospitalized or  
13 treated in any way for addiction or substance abuse  
14 problems?

15 THE DEFENDANT: No.

16 THE COURT: Are you -- is your mind clear right  
17 now?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you had any difficulty  
20 understanding my questions so far?

21 THE DEFENDANT: No.

22 THE COURT: Mr. Jacobson, have you discussed  
23 the matter of a guilty plea with your client?

24 MR. JACOBSON: I have, your Honor.

25 THE COURT: In your view, does he understand

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1 the rights he would waive by pleading guilty?

2 MR. JACOBSON: He does.

3 THE COURT: And do you have any reason to  
4 question your client's competence to proceed today?

5 MR. JACOBSON: No, I don't.

6 THE COURT: All right. Now, Mr. Arroyo, let's  
7 turn to this one page consent form that you signed. I  
8 want to explain that to you.

9 I'm what's called a magistrate judge. Your  
10 case is assigned to a higher ranking judge named Judge  
11 Weinstein. The most important difference between us for  
12 today's purpose is that if you are convicted of a crime  
13 in this case, it's Judge Weinstein and not me, who's  
14 going to decide what your sentence will be. You  
15 understand that?

16 THE DEFENDANT: Uh-um.

17 THE COURT: So for that reason, you might  
18 prefer to have Judge Weinstein listen to your plea in  
19 person. And you have every right to do that if you want.  
20 If that's what you prefer, we'll find a time when Judge  
21 Weinstein is available and no harm will come to you from  
22 making that decision. You understand that?

23 THE DEFENDANT: I understand.

24 THE COURT: Okay. If you understand that you  
25 have that right and you're willing to waive it, I'll



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1 listen to your plea today. As I mentioned earlier, we're  
2 making an audio recording of everything that's being said  
3 here. Judge Weinstein will read a transcript of today's  
4 proceeding, before he decides whether to accept your plea  
5 and before he decides what your sentence should be. You  
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you willing to waive your right  
9 to proceed before Judge Weinstein just for today's  
10 purpose and instead have me conduct the proceeding?

11 THE DEFENDANT: Yes.

12 THE COURT: And is that what you intended by  
13 signing this consent form?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Next, I want to talk  
16 with you about this waiver of indictment form that you  
17 signed. And to discuss that, we have to take a look at  
18 the document called the "superceding information" that  
19 the government wants to file. Have you seen this  
20 document? You have it there with you?

21 THE DEFENDANT: Yeah.

22 THE COURT: Okay. Now, this superceding  
23 information alleges that you committed a crime described  
24 as coercion and enticement of a minor to engage in  
25 illegal sexual activity. Now, have you had a chance to

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1 read the document?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you feel that you understand the  
4 charge there?

5 THE DEFENDANT: Yes.

6 THE COURT: As we go forward, I'll explain this  
7 charge in a little more detail but for right now I want  
8 to make sure that you understand that crime that's  
9 charged in the superceding information is a felony, which  
10 means that it can be punished by more than a year in  
11 prison. Because it's a felony, you have the right not to  
12 be prosecuted for that crime unless a grand jury finds  
13 probable cause to bring that charge against you in what's  
14 called an "indictment." Now, an information or the  
15 superceding information, the kind of document we have  
16 here, that's just an accusation that was written down by  
17 the prosecutor. And the prosecutor didn't have to go  
18 before a grand jury and show probable cause before filing  
19 this document. You understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, a grand jury is a group of 16  
22 to 23 citizens. And before they could vote to indict  
23 you, at least 12 of them would have to agree that there's  
24 probable cause to believe that you committed the charged  
25 offense. So if you don't waive your right to have the

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1 grand jury consider your case, the prosecutor cannot  
2 simply use this information to prosecute you, instead he  
3 would have to go before the grand jury and he might or  
4 might not decide to do that. If the prosecutor did  
5 decide to present the case to the grand jury, the grand  
6 jury might or might not decide to indict you. So if you  
7 waive your right to have the grand jury consider your  
8 case, we'll proceed on the basis of this information that  
9 was written by the prosecutor and it will be as if you  
10 had been indicted on that charge by the grand jury.

11 Have you discussed waiving your right to the  
12 grand jury with your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. Do you understand your  
15 right to have the grand jury consider your case?

16 THE DEFENDANT: Yes.

17 THE COURT: And we'll talk about the agreement  
18 document that you have but other than the promises that  
19 are written down in this agreement that you've made with  
20 the government, has anyone promised you anything to waive  
21 your right to grand jury consideration?

22 THE DEFENDANT: No.

23 THE COURT: And are you waiving your right to  
24 grand jury consideration because of any threat or force?

25 THE DEFENDANT: No, no.

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1 THE COURT: Okay. Do you wish to give up your  
2 right to indictment by the grand jury and instead allow  
3 the prosecutor to file an information against you?

4 THE DEFENDANT: Yes.

5 THE COURT: And is that what you intended by  
6 signing this consent form?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Jacobson, is there any legal  
9 reason why your client should not waive indictment?

10 MR. JACOBSON: No, your Honor.

11 THE COURT: All right. Now, I said I would  
12 talk about the specifics of the offense in a little more  
13 detail. Let's do that now.

14 The government would have to prove several  
15 facts beyond a reasonable doubt to prove you guilty of  
16 the offense charged in the superceding information.  
17 They'd have to prove that you used the internet or an  
18 internet application and that you used it to persuade or  
19 to induce or entice or to coerce somebody who is under  
20 the age of 18 to engage in sexual activity in a way that  
21 would violate New York State Law, specifically by  
22 constituting the crime of promoting sexual performance by  
23 a child. They'd have to prove that you used the internet  
24 or the internet app to produce this effect, knowingly and  
25 intentionally. Not as the result as some sort of

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1 accident or mistake. They'd have to do -- they'd have to  
2 prove that you engaged in this conduct at some point  
3 during the period charged in the superceding information  
4 between 2012 and 2015 and they'd have to prove that you  
5 engaged in at least some of this conduct within the  
6 Eastern District of New York, which is a geographical  
7 area that includes all of Brooklyn, Queens, Staten Island  
8 and Long Island. Do you feel that you understand, so  
9 far, what the government would have to prove to convict  
10 you of this offense?

11 THE DEFENDANT: Yes.

12 THE COURT: And Mr. Rolle, have I omitted or  
13 misstated any of the essential elements of the offense?

14 MR. ROLLE: You have not, your Honor.

15 THE COURT: All right. So let me just check in  
16 case I forgot to ask. Mr. Arroyo, do you feel that you  
17 understand what the government would have to prove to  
18 convict you of this offense?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, you have the right to plead  
21 not guilty and make the government prove all of those  
22 facts. You understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: If you plead not guilty, under our  
25 constitution, you'll be entitled to a speedy and public

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1 trial by a jury with the assistance of counsel on that  
2 charge. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Since you can't afford private  
5 counsel, the court has appointed Mr. Jacobson to  
6 represent you. And he will represent you at every stage  
7 of this proceeding. He'll represent you at trial if you  
8 want a trial, he'll represent you at sentencing if you're  
9 found guilty and he'll represent you on appeal if you  
10 wish to challenge your conviction or sentence. And if  
11 for any reason he becomes unavailable, another lawyer  
12 will be appointed to take his place and all of that would  
13 be at not cost to you. You understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And at the trial, the government  
16 would have to bring its witnesses to court so that -- I'm  
17 sorry, I jumped ahead for a moment. Before I get to  
18 that, at a trial, you would be presumed innocent and the  
19 government would have to overcome that presumption and  
20 prove you're guilty beyond a reasonable doubt. You  
21 wouldn't have to prove your innocence. If the government  
22 failed to prove your guilt beyond a reasonable doubt, the  
23 jury would have a duty to find you not guilty. Do you  
24 understand that?

25 THE DEFENDANT: Yes.

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1           THE COURT: At the trial, the government would  
2 have to bring its witnesses to court so they could  
3 testify in your presence. Your attorney would have the  
4 right to cross-examine those witnesses. He could object  
5 to any evidence that the government tried to offer  
6 against you and he could offer evidence in your behalf if  
7 he thought there was evidence that might assist you.

8           Your attorney could also compel witnesses to  
9 whom you wish to call to appear at the trial. Understand  
10 all of that?

11           THE DEFENDANT: Yes.

12           THE COURT: You would also have the right to  
13 testify in your own behalf if you wish to do so at the  
14 trial but you couldn't be forced to be a witness and  
15 that's because under our constitution, no one can be  
16 forced to testify against themselves. So if you decided to  
17 go to trial and you decided not to testify, the judge  
18 would tell the jurors that they must not consider your  
19 silence in deliberating on their verdict. Do you  
20 understand that?

21           THE DEFENDANT: Yes.

22           THE COURT: Now, if you plead guilty and if  
23 based on my recommendation the court accepts that plea,  
24 you'll be giving up your right to a trial and the other  
25 rights that we've discussed. There won't be a trial.

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1 You'll simply be found guilty on the basis of your plea  
2 and you won't ever be able to challenge that finding of  
3 guilt. Not in an appeal in this case, not some later  
4 case, not ever. The question of your guilt would be  
5 settled for all time. You understand that?

6 THE DEFENDANT: I understand.

7 THE COURT: You should also understand that if  
8 you decide to plead guilty, I'm going to have to ask you  
9 some questions about what you did that makes you think  
10 you've committed this offense. If you decide to answer  
11 my questions and admit that you committed the crime  
12 charged in the superceding information, you'll be giving  
13 up your right not to be a witness against yourself. You  
14 understand that?

15 THE DEFENDANT: I understand.

16 THE COURT: Are you willing to give up your  
17 right to a trial and the other rights that we've  
18 discussed?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Then, let's turn next  
21 to the agreement document. Do you have it in front of  
22 you? Do you have --

23 MR. JACOBSON: We do, your Honor.

24 THE COURT: -- the agreement?

25 All right. I have the original document as I



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1 mentioned up here. If you want to take a look at it at  
2 any point while we're discussing it Mr. Arroyo, let me  
3 know that and I'll bring it down to you. Okay?

4 THE DEFENDANT: Okay.

5 THE COURT: All right. Now, is this document  
6 that I've got, the one with your signature on it, is  
7 that, in fact, your agreement with the government?

8 THE DEFENDANT: Yes.

9 THE COURT: I'm not going to go through it line  
10 by line with you because I don't want to give you the  
11 wrong idea that there's any one part of it that's more  
12 important or less important than any other. As far as I  
13 can tell from looking at the document, it's the whole  
14 thing that is your agreement with the government. Is  
15 that your understanding?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you think the government has  
18 made you any promise that is not written down in this  
19 document?

20 THE DEFENDANT: No.

21 THE COURT: All right. And Mr. Jacobson, is  
22 that your understanding as well?

23 MR. JACOBSON: It is.

24 THE COURT: Mr. Rolle, is it your  
25 understanding?

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1 MR. ROLLE: Yes, it is, your Honor.

2 THE COURT: All right. Then, let's talk next,  
3 Mr. Arroyo, about what could happen at sentencing.

4 If you're found guilty of the crime charged in  
5 the superceding information, the court could sentence you  
6 to spend the rest of your life in prison. You understand  
7 that?

8 THE DEFENDANT: I understand.

9 THE COURT: Under normal circumstances, the  
10 court must impose a sentence of at least 10 years in  
11 prison. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: In addition to prison, the court  
14 must also impose a term of what's called supervised  
15 release of at least five years and possibly as long as  
16 the rest of your life. What that means is, upon your  
17 release from prison, if you're released from prison, you  
18 would be supervised and you'd have to obey certain  
19 conditions. And if during that period of supervision of  
20 at least five years and possibly as long as the rest of  
21 your life, if you were to violate any of the conditions  
22 of your release, you could be sent back to prison for up  
23 to five years, without credit for the time that you'd  
24 already be released and under supervision and without  
25 credit for the time that you'd already been in prison.

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1 Do you understand that?

2 THE DEFENDANT: I understand.

3 THE COURT: I just need to take a look at one  
4 provision here.

5 (Pause in the proceedings)

6 THE COURT: In addition, if the violation is  
7 a -- if the violation of the conditions of your release  
8 involves the commission of a criminal offense, under  
9 certain provisions of the United States Code that are  
10 written down in your plea agreement, you see them there  
11 in paragraph 1c at the bottom of page one?

12 THE DEFENDANT: Uh -- yeah.

13 THE COURT: Okay. If that's the violation and  
14 it's a violation that constitutes a crime for which a  
15 prison term of more than one year can be imposed, the  
16 sentence with a violation of supervised release would  
17 have to be at least five years and could be up to the  
18 rest of your life. Do you understand that?

19 THE DEFENDANT: I understand.

20 THE COURT: All right. In addition to prison  
21 and supervised release, the court can impose a monetary  
22 fine of up to \$250,000. Do you understand that?

23 THE DEFENDANT: I understand.

24 THE COURT: In addition to the prison time and  
25 supervised release and the fine, the court must also

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1 require you as part of the sentence to pay restitution to  
2 any victim of the offense. Do you understand that?

3 THE DEFENDANT: I understand.

4 THE COURT: Now, restitution means you're  
5 making the victim whole for any losses he or she has  
6 suffered and the court's going to have to determine the  
7 amount of restitution that you'll owe. I can't tell you  
8 today what it might be. Now, some people might not want  
9 to plead guilty if they didn't know the worst that can  
10 happen to them at sentencing. And if that's how you  
11 feel about it, don't plead guilty today. Because I'm not  
12 in a position to tell you what the maximum amount of  
13 restitution might be. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you wish to proceed with a  
16 guilty plea even though I can't tell you the amount of  
17 restitution?

18 THE DEFENDANT: I wish to proceed.

19 THE COURT: Okay. In addition to everything  
20 else I've already told you about, the court must impose  
21 two forms of what's called a special assessment. The  
22 special assessment that is normally imposed on every  
23 defendant who is found guilty of a crime in the amount of  
24 \$100 and an additional special assessment for this  
25 particular offense, in the amount of \$5000. Do you

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1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: In addition to everything else I've  
4 already talked about, there are two other consequences of  
5 a conviction that you should know about.

6 First, you'll be required to register as a sex  
7 offender. Do you understand that?

8 THE DEFENDANT: I understand.

9 THE COURT: And finally, in addition to  
10 everything else I've already told you about, the court  
11 can order you to sentence -- to forfeit certain property  
12 and there's specific items of property that you've agreed  
13 to, to have forfeited and they're listed on pages five  
14 and six. You understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Do you feel you  
17 understand what could happen to you at sentencing?

18 THE DEFENDANT: Uh --

19 THE COURT: I've tried to tell you all of the  
20 things that could happen at sentencing. Prison and then  
21 supervised release --

22 THE DEFENDANT: Yeah.

23 THE COURT: -- the fines, the special  
24 assessment, restitution, registering as a sex offender,  
25 the forfeiture. You feel you understand all of that?

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1 THE DEFENDANT: Yes.

2 THE COURT: Okay. And Mr. Rolle, have I  
3 omitted or misstated any of the sentencing possibilities?

4 MR. ROLLE: You have not, your Honor.

5 THE COURT: Okay. So let's talk next, Mr.  
6 Arroyo, about how the judge will go about choosing the  
7 sentence. And the first thing we should discuss about  
8 that is the federal sentencing guidelines. Have you  
9 discussed those with your attorney? The federal  
10 sentencing guidelines?

11 THE DEFENDANT: Yeah.

12 THE COURT: Okay. Now, I see in your plea  
13 agreement that the prosecutor's office has provided its  
14 estimate of how the calcu -- how the guidelines will be  
15 calculated in this case and what the result will be. And  
16 I'm sure the prosecutor tried to be accurate in doing  
17 that. But what you must understand is that any  
18 calculation or estimate of the guidelines that you may  
19 have seen or heard about, whether it comes from the  
20 prosecutor or your attorney or anyone else, it may be  
21 incorrect. And that's because the only calculation of  
22 the guidelines that's going to count in this case is the  
23 one that the judge will do at the time of your  
24 sentencing. Do you understand that?

25 THE DEFENDANT: I understand.

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1           THE COURT: The way these guidelines work is,  
2 they help the judge consider a sentence by coming up with  
3 two numbers. The first number measures the seriousness  
4 of the offense. So for example, in a case like this one,  
5 the age of the victim can affect the first score. The  
6 second score measures your own background and how -- if  
7 you've got any criminal convictions so that conviction in  
8 your past would affect that sentence score. With those  
9 two scores, the judge can look up a box in a table that  
10 corresponds to those two numbers and written down in that  
11 box is a range of months. And that's the recommended  
12 sentencing guideline range for your case. Do you  
13 understand how it works?

14           THE DEFENDANT: Yes.

15           THE COURT: Now, the judge must consider  
16 imposing a sentence within that recommended range. But  
17 the judge could also impose a more severe or a more  
18 lenient sentence. And in making that decision, the judge  
19 is going to have to take into consideration the  
20 circumstances of the offense and your background and the  
21 need to promote respect for the law, the need to impose a  
22 just punishment on you, the need to deter you and others  
23 from committing crimes in the future and any need that  
24 you may have for effective correctional treatment. The  
25 judge will take all of that into consideration and impose

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1 a sentence that he thinks to be fair under all of those  
2 circumstances. You understand?

3 THE DEFENDANT: I understand.

4 THE COURT: To help the judge do that, the  
5 probation department is going to write a report. And as  
6 they prepare that report, they'll want to interview you  
7 and have your attorney present for the interview.  
8 They'll probably talk to the government and perhaps a  
9 victim, if there's more than one victim they'll talk to  
10 all of them, I'm sure. They may talk to others as well.  
11 And they'll write a report that has information about  
12 your background and about what happened in this case.  
13 They will have a discussion of the law that applies and  
14 it will have a calculation of the sentencing guidelines.  
15 And you'll have a chance to read that report and review  
16 it with your attorney before your sentence. You  
17 understand?

18 THE DEFENDANT: I understand.

19 THE COURT: You may not like what you see in  
20 the report. You may think that it's inaccurate or unfair  
21 in some way, you may think that it gets the law wrong or  
22 you may think it gets the guidelines wrong. None of that  
23 will be a reason to take back your guilty plea. You  
24 understand that?

25 THE DEFENDANT: I understand.



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1           THE COURT: What you can do if there's a  
2 problem with the probation report is object to it and  
3 your attorney will help you file those objections. The  
4 judge will hear arguments from your attorney and from the  
5 government about those objections and then he'll rule on  
6 them. Then he'll listen to you and your attorney and the  
7 prosecutor, perhaps to listen to victims as well, perhaps  
8 others as well about what the sentence should be. And  
9 then the judge will calculate the sentencing guidelines  
10 that apply in this case and then the judge will impose a  
11 sentence on you. Do you understand that process?

12           THE DEFENDANT: I understand.

13           THE COURT: Now, at any step along the way in  
14 that process I just described, you may think that the  
15 judge makes a mistake of some sort. You may think he --  
16 that he acts unfairly or he gets the facts, the law  
17 wrong, you may think he gets the guidelines wrong, again,  
18 none of that will be a reason to take back your guilty  
19 plea. Do you understand that?

20           THE DEFENDANT: I understand.

21           THE COURT: Now, normally if the judge were to  
22 make a mistake in sentencing you, you could appeal the  
23 sentence to a higher court. You wouldn't be able to  
24 challenge the finding of guilt on appeal if you had  
25 pleaded guilty. But even after a guilty plea, you would

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1 have the right normally to appeal an unlawful sentence.

2 You understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: However, I do see in your plea  
5 agreement, you've agreed that as long as the court  
6 imposes a term of imprisonment of 151 months or less,  
7 you're not going to appeal the sentence or challenge it  
8 in some later case. You're going to accept the sentence.  
9 Is that your understanding as well?

10 THE DEFENDANT: Yes.

11 THE COURT: By making that a part of your  
12 agreement, you're giving up part of the right that you  
13 would otherwise have to appeal an unlawful sentence. Is  
14 it your intention to give up that part of your right to  
15 appeal?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Is there any question  
18 that you'd like to ask me about the charge in this case,  
19 about your rights, about the sentencing possibilities or  
20 anything at all?

21 THE DEFENDANT: No.

22 THE COURT: I want to give you another chance  
23 to respond to that and the reason I do that is that  
24 people do sometimes change their mind about sent -- about  
25 pleading guilty. And I just want to be sure that you

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1 understand that if you do plead guilty today and you come  
2 back later and ask to withdraw your plea, the prosecutor  
3 is going to argue that you shouldn't be allowed to do so  
4 because today you said you understood what you were  
5 doing. And he might very well win that argument. So if  
6 there's anything that you need to think about or ask  
7 about before making this decision, now's the time to do  
8 it because later it may be too late. Do you understand  
9 that?

10 THE DEFENDANT: Yes.

11 THE COURT: And is there anything at all that  
12 you'd like to ask me?

13 THE DEFENDANT: No.

14 THE COURT: Okay. Is there any -- do you want  
15 more time to think about your decision or to discuss it  
16 with your attorney?

17 THE DEFENDANT: No.

18 THE COURT: Ready to proceed?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Mr. Jacobson, is there any  
21 legal reason why your client should not plead guilty?

22 MR. JACOBSON: No, your Honor.

23 THE COURT: Mr. Arroyo, are you satisfied with  
24 the legal representation you have received up until now?

25 THE DEFENDANT: Yes.

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1 THE COURT: And tell me, please, how do you  
2 plead to the sole charge of the superceding information,  
3 accusing you of coercion and enticement of a minor to  
4 engage in illegal sexual activity, "guilty" or "not  
5 guilty?"

6 THE DEFENDANT: Guilty.

7 THE COURT: Are you making this plea of guilty  
8 voluntarily and of your own free will?

9 THE DEFENDANT: Yes.

10 THE COURT: Has anyone threatened or forced you  
11 to plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Other than the promises that are  
14 written down in your agreement with the government, has  
15 anyone made any promise that is causing you to plead  
16 guilty?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone made any promise about  
19 what your sentence will be?

20 THE DEFENDANT: No.

21 THE COURT: Okay. You seem to hesitate, do you  
22 have some uncertainty about that?

23 THE DEFENDANT: I'm sure.

24 THE COURT: You're sure. Okay.

25 So then, tell me please, in your own words,

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1 what you did that makes you feel that you've committed  
2 this offense.

3 THE DEFENDANT: Between 2012 and 2015, I was  
4 communicating with a girl on the internet. I knew she  
5 was under the age of 18. Through the internet chat  
6 program I asked her to send me naked pictures of her. I  
7 was at Queens, New York at the time.

8 THE COURT: All right. The statute requires  
9 the government to prove that what you enticed or  
10 persuaded or induced the person to do would constitute  
11 promoting sexual performance by a child.

12 First of all, how did -- did you ask the person  
13 to do this?

14 THE DEFENDANT: Yes.

15 THE COURT: To send you the pictures? Okay.

16 Mr. Rolle, can you tell me about whether  
17 sending the picture that Mr. Arroyo has described  
18 constitutes perform -- promoting a sexual performance by  
19 a child.

20 MR. ROLLE: Yes, Judge. The government would  
21 be prepared at trial and proffers now that the defendant,  
22 in the time frame that he's allocuted to, asked the  
23 victim to send sexually explicit images, images of her  
24 genitalia and to engage in mutually -- mutual  
25 masturbation via the internet which would qualify as a

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1 violation of New York State Penal Law Section 263.15.

2 THE COURT: Okay. Mr. Arroyo, did you hear  
3 what Mr. Rolle said about what the government would prove  
4 at trial?

5 THE DEFENDANT: Yes.

6 THE COURT: Are those facts true?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Mr. Rolle, is there anything  
9 further that you think I should elicit or that you'd like  
10 to proffer?

11 MR. ROLLE: I believe we did cover it, your  
12 Honor but I may have missed it, that the defendant  
13 engaged in this conduct in the Eastern District.

14 THE COURT: Yes, you said you were in Queens  
15 when you asked the person to send these photos, correct?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 MR. ROLLE: Thank you, Judge.

19 THE COURT: Anything further?

20 MR. ROLLE: No, Judge.

21 THE COURT: And Mr. Rolle, do you agree with me  
22 that the allocution now satisfies all of the essential  
23 elements of the charged offense?

24 MR. ROLLE: I do, your Honor.

25 THE COURT: Do you think there's anything

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1 further I should discuss with Mr. Arroyo pursuant to Rule  
2 11?

3 MR. ROLLE: No, Judge, I believe we've covered  
4 everything.

5 THE COURT: Mr. Jacobson, is there anything  
6 further you think I'm supposed to cover under Rule 11?

7 MR. JACOBSON: No, your Honor, I believe it's  
8 sufficient.

9 THE COURT: All right.

10 Well, based on what I've heard today, I find  
11 that Mr. Arroyo is competent to proceed. I find that  
12 he's acting voluntarily, that his plea did not result  
13 from any force or threats or undisclosed promises. I  
14 find that he fully understands his rights and the  
15 potential consequences of his plea and that there's a  
16 factual basis for his plea of guilty.

17 I therefore respectfully recommend that the  
18 court accept Mr. Arroyo's plea of guilty to the sole  
19 charge in the superseding information.

20 I'm going to ask all of you to convene before  
21 Judge Weinstein for sentencing proceeding on September  
22 21, 2017 at 10:00 in the morning.

23 I'm going to return to the government for safe  
24 keeping the signed original plea agreement.

25 Is there anything else for today folks?

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1 MR. ROLLE: Nothing from the government, your  
2 Honor.

3 MR. JACOBSON: Not from Mr. Arroyo, thank you.

4 THE COURT: Thank you all. Have a very good  
5 day and good luck to you sir.

6 (Matter concluded as of this date)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 16th day of August, 2017.

  
Rosalie Lombardi  
Transcription Plus II